Springfield Air Center, Inc. *and* Attorney James Lynch on behalf of Harold Delaney and Randy Shafer

Springfield Air Corporation *and* Attorney James Lynch on behalf of Harold Delaney and Randy Shafer. Cases 33–CA–9563 and 33–CA–9772

July 13, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On March 22, 1993, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings as modified,[1] and conclusions and to adopt the recommended Order as modified.[2]

1. We agree with the judge's finding that Harold Delaney was not a supervisor within the meaning of Section 2(11) of the Act after he tendered his resignation as director of maintenance on July 8, 1991. We find it unnecessary to rely on the judge's findings concerning Delaney's status before that date. The Respondent contends that Delaney signed a timecard approving vacation pay for Randy Shafer after July 8 and that therefore Delaney was still a supervisor at the time of his August 16, 1991 termination. We find no merit to the Respondent's contention. Delaney's superior, Facility Manager Wes Pierceall, gave final approval for the vacation pay request. In any event, Delaney's approval was an isolated incident and, in view of the record as a whole, we do not regard it as sufficient to establish the statutory authority contemplated by Section 2(11) of the Act. See *Birmingham Printing Pressmen's Local 55 (Birmingham News)*, 300 NLRB 1, 5 (1990).

2. The Respondent argues that the discharges were lawful because the Respondent's board of directors, not President Morgan, made the final termination decision and the board of directors had no knowledge of the protected, concerted activities of Delaney and Shafer. The record shows that Morgan had knowledge of their protected, concerted activity, made the decision to terminate, and sought confirmation from the directors. We find that Morgan effectively made the decision to discharge Delaney and Shafer. We further find that even if the board of directors had made the final decision, the unlawful motivation of the Respondent's president would be imputed to the Respondent, in the circumstances here, where Morgan had direct input into the decision. See *Grand Rapids Die Casting Corp. v. NLRB*, 831 F.2d 112, 117 (6th Cir. 1987), enfg. 279 NLRB 662 (1986); *JMC Transport v. NLRB*, 776 F.2d 612, 619 (6th Cir. 1985), enfg. 272 NLRB 545 (1984), and cases there cited.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Springfield Air Center, Inc., and Springfield Air Corporation, Springfield, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Discharging any employee for engaging in concerted activity protected by Section 7 of the Act.''

2. Substitute the following for paragraph 2(a).

''(a) Offer Harold Delaney and Randy Shafer immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered by them as a result of the discrimination against them, in the manner set forth in the remedy section of the judge's decision.''

3. Substitute the attached notice for that of the administrative law judge.

[1] In adopting the judge's finding that Delaney and Shafer acted in concert with each other, we rely on the principles set forth in *Meyers Industries*, 281 NLRB 882 (1986), affd. 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988), rather than those set forth in *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984).

We correct the judge's reference to the dates of hire for certain individuals: Randy Shafer, Harold Delaney, and Gregory Gifford began employment with the Respondent in December 1990, January and July 1991, respectively. In sec. III,A, par. 10, L. 6 the name ''Miller'' should be ''Gifford.'' We find that these errors do not warrant a different conclusion in the instant case.

To the extent that the Respondent has excepted to some of the judge's credibility findings, the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to conform his cease-and-desist language to the violation found. We shall also conform the judge's reinstatement language to that traditionally used by the Board.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

Accordingly, we give you the following assurances.

WE WILL NOT discharge employees for engaging in concerted activities protected by Section 7 of the Act.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Harold Delaney and Randy Shafer immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make them whole for any loss of earnings and other benefits suffered by reason of their unlawful discharge, with interest.

Our employees are free to engage in any of the rights guaranteed them by Section 7 of the National Labor Relations Act.

SPRINGFIELD AIR CORPORATION FORMERLY D/B/A SPRINGFIELD AIR CENTER, INC.

Deborah A. Fisher, Esq. and *Valerie L. Ortique, Esq.*, for the General Counsel.

John H. Germuradd, Esq., for Respondent Springfield Air Center, Inc.

Michael R. Liese, Esq., of Springfield, Illinois, for Respondent Springfield Air Corporation.

James D. Lynch, Esq., of Springfield, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. These consolidated matters were heard in Springfield, Illinios, on September 29 through October 1, 1992. Subsequent to an extension in the filing date, briefs were filed by all parties. The proceeding is based upon charges filed September 23, 1991,[1] and April 6, 1992, by individuals Harold Delaney and Randy Shafer. The Regional Director's consolidated complaint dated May 22, 1992, as amended, alleges that Respondents Springfield Air Center, Inc. and Springfield Air Corporation violated Section 8(a)(1) of the National Labor Relations Act by terminating the two charging individuals because of their protected, concerted activities.

On a review of the entire record in this case and from my observation of witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Springfield Air Corporation is engaged in providing aircraft fuel, charter, rental, repair, and flight instruction at its fixed base in Springfield, Illinois. Springfield Air Center was in operation at the time of the alleged unfair labor practices herein. On Friday, March 27, 1992, it ceased operations and on March 30, Springfield Air Corporation began business operations at the same location and Springfield Air Corporation continued to operate the business of Springfield Air Center in basically unchanged form and Springfield Air Corporation admitted that it is a Golden State[2] successor for purposes of liability herein.

Respondent annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside Illinois. It admits that at all times material is has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is noted that because Respondent is not a common carrier by air engaged in commerce, the exercise of jurisdiction here is under the National Labor Relations Act and not under the Railway Labor Act, see *McKinley Air Transport*, 227 NLRB 267 (1976). *Safair Flying Service*, 207 NLRB 119 (1973).

II. THE ALLEGED UNFAIR LABOR PRACTICES

On August 15, Respondent sent a significant aircraft engine component (a magneto) to a qualified repair facility. When it was returned the following day and appeared to be ready for installation aviation mechanics Harold Delaney and Randy Shafer, who had been working on the repairs of the plane observed that the magneto was not accompanied by the usual ''maintenance release,'' a required Federal Aviation Administration (FAA) certification that repairs have been done correctly. Rather than installing the magneto, they began work on another plane, a Cessna 310. When Company President Mike Morgan asked why they were not making the installation, they said that they needed the maintenance release and Morgan left. A short while later Facility Manager Wes Pierceall came up to Shafer's window (both mechanics were in the plane with the engines running) told them Morgan wanted them to go ahead and install the magneto. Pierceall asked if a faxed copy of the release would be sufficient and Shafer replied that that would be for installation and ground testing but that the plane couldn't be released for flight until the original came in and looked at Delaney who

[1] All following dates will be in 1991 unless otherwise indicated.

[2] *Golden State Botttling Co. v. NLRB*, 406 U.S. 272 (1972).

nodded he agreed. Pierceall also testified that when he (first), told them what Morgan wanted, Delaney (who was in the seat furthest away from Pierceall), replied: ''Fuck Morgan.'' Neither Delaney or Shafer recall this comment being made.

Pierceall did not have a faxed copy of the maintenance release with him when he spoke to Delaney and Shafer but he tetified that Morgan told him he had a faxed copy and that he [Morgan] would show it to the employees. Pieceall also testified that Morgan became upset when he told Morgan that the employees had refused to install the magneto unless they were shown a faxed copy of the maintenance release but that Morgan did not react when Pierceall conveyed Delaney's alleged comment. (Morgan, who is no longer with the Respondent, and apparently no longer in the area, did not appear as a witness.)

Delaney and Shafer completed the ground test on the Cessna 310 and Shafer gathered the necessary tools to install the magneto in anticipation of being shown a faxed copy of the maintenance release. At 11 a.m. Pierceall returned to the shop and asked Delaney to locate some records on another aircraft. Delaney complied. Shafer testified that he saw Pierceall speaking to Delaney although he could not hear their conversation and that Pierceall then approached him and instructed him to put the magneto in the Navajo. Again, Shafer told him that he could not install the part at that time because he did not have any maintenance release for the part.

Delaney had ben looking for the records Pierceall requested about 10 minutes when Pierceall returned and instructed both employees not to touch any aircraft and to go to the maintenance office.

After waiting about an hour and a half (until 1 p.m.), Pierceall came in and asked them into his office. When they did, Steve Thomas, the company accountant, was present. Pierceall handed the employees their paychecks and a letter of termination signed by Mike Morgan. The letter simply stated that their services were no longer needed. After, reading the letter, Delaney asked Pierceall if he was being fired for any other reason. According to Delaney, Pierceall's only response was ''that's from Mike.'' Pierceall stated during direct examination that he was never told why Delaney and Shafer were terminated.

III. DISCUSSION

These cases arose over a brief refusal of two aircraft mechanics to install a vital aircraft engine part until they had documentation they believed was required by FAA rules and regulations and the Respondent's prompt reaction in discharging them for their action.

The Respondent defends its conduct by asserting that Delaney was a statutory supervisor, that Delaney and Shafer were not engaged in protected concerted activity, that they both were terminated for insubordination, and that, otherwise, the Company had planned to release Shafer in the near future because of economic reasons.

A. *Supervisory Status*

Inasmuch as the Respondent raised Delaney's purported supervisory status as a defense, the burden of proof rest upon the Respondent to establish that status. See *Thayer Dairy Co.*, 233 NLRB 1383 (1977).

Section 2(2) of the Act defines a supervisor as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The existence of any one element can be sufficient to convey supervisory status, however, sporadic or occasional exercise of supervisory authority is insufficient to make an employee a supervisor. Also, investiture with a title and theoretical power which may imply supervisory authority likewise is insufficient to transform a rank-and-file employee into a supervisor. See *Thayer*, supra, and *Teamsters Local 574*, 259 NLRB 344 (1981), and cases cited therein. Moreover, it is important that authority is actually exercised with the use of independent judgment and hat the supervisor be something more than a mere conduit for managerial directives, see *Hydro Conduit Corp.*, 254 NLRB 433 (1981).

Of special interest here is the fact that when Shafer first began to work for Respondent in January 1991, he was in the position of director of maintenance. He thereafter resigned that position and continued employment as an aircraft mechanic. Delaney was hired as an aircraft mechanic in December 1990. After Shafer's resignation of the ''Directors'' position, Manager Morgan asked Delaney to take the position, which he did in mid-June 1991, at an annualized increase in pay of $4000.

Both Shafer and Delaney had received FAA approved training, and held A&P licenses (airplane and powerplant) and inspection authorization certification (as did one other mechanic Robert Miller who had worked there between February and mid-August 1991, when he was laid off for lack of work), and they had received school instruction in and were reasonably familiar with applicable FAA regulations including those dealing with parts repair documentation, and penalties for failure to follow regulations. Gregory Gifford also worked as an A&P mechanic for a few months prior to August 1991. He filled out an application and spoke with Delaney (Delaney also interviewed another applicant who was not hired) who later called him and asked if he was still interested in the job. He testified that he was the ''junior'' man there and that Delaney ''basically'' gave him instructions but that ''we came in and we knew what we were doing'' and that when he was ready for his next job he would ''look at the sheet or ask Harold (Delaney) or any of the other guys.'' Miller testified that he sometimes ordered parts himself and also observed that Manager Morgan took a more active role in the shop ''toward the end.''

Delaney also testified that although he originally attended weekly Monday meetings with Pierceall and the Customer Service Manager Harrison[3] and Avionics Manager Musgrave (the only person in that department) these meetings petered out after Morgan began to be onsite full time. This occured subsequent to July 8 when Delaney resigned from the position as director of maintenance (he also requested that he re-

[3] In this respect I find Miller's testimony about Morgan credible an corroborative of testimony by Delaney and Shafer and I do not credit Harrison's disclaimer on the same subject.

turn to his mechanics position). Morgan was unhappy that Delaney resigned without notice and asked him to stay until someone could be hired to assume the director of maintenance responsibilities to sign for their FAA Air Taxi certificate. Morgan agreed to assume the managerial responsibilities for the position and agreed that when a replacement was hired Delaney could remain as a mechanic.

Delaney estimates that prior to July 8 he spent 80 percent of his time working as a mechanic and the rest scheduling, calling and dealing with customers and that after July 8 his time spent as a mechanic increased to 90 percent.

During the first week of August (mechanic Gifford was gone and Miller was about to be laid off) Delaney and Shafer were introduced by Morgan to Phil Hill and were told he would begin as director of maintenance after September 1.

Delaney's resignation listed 17 major items he said he was expected to do (besides his mechanics work) which included ''supervise 3 people'' and numerous ministerial items such as ''research and order parts,'' accounting and cost analysis, ''billing,'' ''deal with customers,'' and ''housekeeping,'' said that it all embraced duties enough for 2 or 3 people and that performance of such duties was ''hampered by a lack of understanding and lack of support from upper levels of management.''

Although Delaney exercised a few of the indicia of supervisory status prior to July 8, it appears that except for a few sporadic occasions (such as when he interviewed and effectively recommended that Miller be hired) his added duties as director of maintenance were clerical, ministerial, and routine in nature. Although his inspection and approval of work as required by FAA rules and regulations was important, it was nevertheless routine and ministerial rather than supervisory and appears to have somewhat pro forma and interchangeable with anyone holding appropriate licenses or certificates (as evidenced by the exchange of jobs between Shafer and Delaney).

To the extent that Delaney engaged in any assignment of work it was routine in nature and did not depend or require the exercise of independent discretion. Here, Delaney was given the title director of maintenance not because he was expected to perform independent supervisory authority or because his job was considered to be part of the managerial hiarchy, but solely because the nature of Respondent's business in the maintenance of aircraft and the performance of FAA licensed Air Taxi operation required that a person who holds and A&P certificate be designated as director of maintenance and he be responsible for overseeing required maintenance. In any event, the mere fact that a person may hold a title and responsibility under the rules of one agency does not control the evaluation to be afforded under the unique and specific provisions and president of the National Labor Relations Act and the Board's responsibility and expertise in exercising its authority.

After July 8 Delaney retained only a technical title and his FAA responsibilities for inspections. To the extent that he might have had or exercised ''supervisory'' function before, such duties were thereafter assumed by Morgan or others and I find that his resignation and Morgan's agreement to assume his non-FAA required duties, effectively places Delaney in the position of an employee, not a supervisor, on and after July 8.

After Miller left, there was no one for Delaney to supervise, except Shafer who is shown to hold essentially equal status in the area of FAA qualifications. Moreover, Hill already had been hired (to start in early September).

If, in fact, Delaney were considered to be a supervisor by management, he could have execise independent judgment and made a firm decision that a repaired engine part could not be installed without the appropriate FAA-required documentation. Here, he was not allowed to make any independent decision but was overruled, in effect by Manager Morgan without consultation, and it clearly indicates that management considered him to be a mere employee and not someone who was part of management and responsible for exercising independent discretion. Moreover, it also appears that Pierceall spoke to Shafer, not Delaney, about installing that part, an action inconsistent with the concept that Delaney was a supervisor.

After July 8 Delaney had a bare supervisory title but no supervisory authority and I conclude that the Respondent has not shown that he was a supervisor within the meaning of Section 2(1) of the Act in August at the time of the alleged discrimination against him.

B. *Concerted Activity*

Delaney and Shafer both testified that they were taught in FAA school to inspect the maintenance release prior to installation of repaired parts. Just prior to sending the magneto for repair John Rhoads, flight safety inspector for the FAA had spoken to Delaney about the magneto. At the time, Rhoads visited the facilities of Midway Airlines at the Springfield Airport almost everyday in the perfomance of his inspection duties and would pass through Respondent's hangar area to get to Midway. As he went through on August 15, Rhoads recalled seeing Delaney working on a Piper Navajo plane and that Morgan was also present during the conversation. Rhoads and Delaney both testified that Delaney was checking the points on the magneto with a feeler gauge and Rhoads asked him about a maintenance manual for the magneto and indicated that Delaney did not have the proper tools to work on the magneto. When Delaney agreed Morgan then suggested that the magneto be taken elsewhere for repair.

In addition to Respondent's own witnesses, Rhoads, who has been an FAA safety inspector for over 6 years, testified that FAA regulations state that record entries shall be made when you perform maintenance. He said that based on his experience the directive that a record entry shall be made following maintenance means immediately following performance of maintenance. Rhoads explained that if a part was reinstalled without a maintenance release and subsequently malfunctioned, the FAA would investigate both the person that installed the part and the person that flew the aircraft. Potential penalties, depend on the severity of the problem and could include license suspension or revocation or some civil penalty. Rhoads agreed that if he was a mechanic, he would want to have the maintenance release prior to installing a part such as a magneto and that he would not reinstall the magneto without a maintenance release being present.

Here, Delaney and Shafer reached a mutual agreement that they needed to see a maintenance release form verifying the repair performed prior to installing the repaired magneto. Their agreement was based on their understanding of FAA regulations, an understanding that had a reasonable basis

consistent with their training, as well as the opinion of an FAA inspector and the opinions of several other mechanics who testified. It would appear to be of special importance to Delaney to handle the matter properly inasmuch as the FAA inspector had observed the actual work in progress and the decision to send it away for repair and he was also known to frequently pass through the area where the final installation would occur.

Clearly, both Delaney and Shafer understood that their continued employment could be affected by their participation in conduct violative of FAA regulation and possible discipline or loss of license as a result thereof. They also understood that the regulations involved were designed for the safety and protection of the general public and that their installation of an engine part that had not been properly repaired could create an unsafe condition. They therefore acted together for a protected purpose concerning both their conditions and terms of employment and for the protection of he public over a perceived unlawful and unsafe violation of FAA regulations.

Here, Delaney and Shafer were engaged in concerted activity and both Facility Manager Pierceall and General Manager Morgan knew of the concerted nature of their refusal to install the undocumented engine part see *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984), on remand 766 F.2d 969 (6th Cir. 1985).

C. *The Employer's Motivation and Alleged Reasons for its Actions*

In a discharge case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected, concerted activities were a motivating factor in the employer's decision to terminate them. Here, the record shows that Respondent's management was well aware of the employees' concerns and had even engaged in a discourse over whether or not a faxed copy of the release would be sufficient for them to start the actual installation.

There is no explanation why a fax was not shown to them but it was not and management thereafter elected to react to the employees conduct by pulling them out of the shop, having them sit in the office for over an hour, and then terminating them for their refusal to install an undocumented aircraft engine part. Clearly, their concerted activity was a motivating factor in management's decision and, accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1983), see *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent's principal defense is based upon its contention that both mechanic were engaged in insubordinant conduct, that Delaney had used profane language and that Shafer was ''already'' to be terminated because of lack of work.

The Respondent speculates that Delaney was engaged in some sort of power struggle or personality conflict with Morgan, as indicated by Delaney's alleged ''Fuck Morgan'' remark to Pierceall, and that caused both Delaney and Shafer to suddenly become insubordinate and refuse to work.

This speculation has little factual basis and no probative value and it does not change that fact that the apparent solution to insuring the prompt installation of the engine part was within management's control. The record shows that both Delaney and Shafer were willing to do the work but did other work rather than waste time and Shafer had proceeded to get his tools ready. If in fact Respondent had a fax of the appropriate document, it would appear to a provocation on management's part to decline, for whatever reason, to show it to Delaney and Shafer in the shop. It was not the mechanics' burden to go from the shop to beg Morgan for what should have been provided them in the first place. And, contrary to Repsondent's suggestion, there is nothing in the record to show that they did ''know'' that it was in fact there.

Instead, Morgan decided to immediately discharge both Delaney and Shafer, even though it would leave Respondent with no mechanics. Morgan did seek confirmation for his decision by checking with two members of Respondent's board of directors. Delaney's alleged statement in response to an apparent request to install the magneto without having the documentation of ''Fuck Morgan'' was relayed to board member Kevin Leary who concurred that the mechanic had been insubordinate and could be immediately terminated without any further warning.

Neither Leary nor the board made any meaningful investigation or any attempt to get any facts or explaination from the mechanics. They cannot assert responsibility for the termination while at the same time disclaiming any knowledge that their general manager, Morgan, was basing his claim of insubordination on a protected activity that was an attempt to avoid a violation of Federal regulations, and that such refusal to perform certain work otherwise was provoked by Morgan's failure to show a purported faxed copy of appropriate documentation to the employees.

Although employee misconduct can disqualify an employee from the protection his concerted protest would otherwise enjoy under Section 7 of the Act, it is not at all clear that Delaney made the comment attributed to him. In any event, I conclude that Delaney's alleged language was a profane colloquialism that connotated a disinclination to agree to do what Pierceall was saying Morgan wanted them to do (i.e., install the repaired part without having the proper documentation). The remark was not threatening and it was, at the most, a refusal to engage in conduct that in all likelihood would have violated Federal regulations and I find that if it occured it was not eregious misconduct that would lose the protection of the Act, see *Leasco, Inc*., 289 NLRB 549 (1988).

The Respondent also raises an economic type defense, alleging that the maintenance department was losing money during the Summer and that it was the subject of customer complaints. This is not relevant to the underlying concerted action and Respondent's decision to immediately terminate its only two mechanics. Respondent also asserts that for these same reasons it also had planned to dismiss Shafer (but keep Delaney) when its new director of maintenance, Hill, began in September. It is possible that (if true), that this might have some bearing on the tolling of Respondent's backpay liability but that is a matter for the compliance stage of the proceeding. Otherwise, I find that Respondent's attempts to digress into periferal matters and criticisms of the

mechanics tends to indicate that such reasons are pretextual and confirms that the real reason both mechanics were terminated on August 16, was because of their protected concerted activity in refusing to install an undocumented aircraft engine part.

Under these circumstances, I find that the Respondent has failed to show that it had any valid reason for making a precipitous decision to immediately terminate its only two mechanics for their concerted refusal to engage in one aspect of work assigned to them that would in all likelihood have been a violation of applicable Federal Aircraft Safety Regulations, and I conclude that the General Counsel has met his overall burden of proof and persuasively shown that the Respondent's discharge of Delaney and Shafer was in violation of Section 8(a)(1) of the Act, as alleged.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. On August 16, 1991, and at all times material herein, Harold Delaney was an employee within the meaning of Section 2(3) of the Act and was not a supervisor within the meaning of Section 2(11) of the Act.

3. By discharging employees Harold Delaney and Randy Shafer on August 16, 1991, because they engaged in a protected, concerted activity, Respondent engaged in an unfair labor practice in violation of Section 8(a)(1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate each of the discriminatees to their former jobs or substantially equivalent positions, dismissing, if necessary, any temporary employees or employees hired subsequently, without prejudice to their seniority or other rights and privileges enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them by payment to them of a sum of money equal to that which they normally would have earned from the date of the discrimination to the date of reinstatement in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[4]

The Respondent also shall be ordered to expunge from its files any reference to the illegal terminations and notify them in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel action against them. Otherwise, it is not considered necessary to issue a broad Order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Springfield Air Center, Inc., and Springfield Air Corporation, Springfield, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging any employee for activity protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Harold Delaney and Randy Shafer immediate and full reinstatement and make them whole for the losses they incurred as a result of the discrimination against them in the manner specified in the remedy section of this decision.

(b) Expunge from its files any reference to the discharge of Delaney and Shafer and notify them in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Springfield, Illinois facility copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[4] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. Sec. 6621.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''